

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

Plaintiff,

v.

NICHOLAS MORALES, JR.,

Defendant.

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: Case No. 3:17-cv-7447-BRM-LHG
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MEMORANDUM AND ORDER

THIS MATTER is before this Court on Plaintiff United States of America's Motion to Alter Judgment. (ECF No. 55.)

Under Federal Rule of Civil Procedure 59(e), "[a] motion to alter or amend the judgment must be filed no later than 28 days after the entry of the judgment." *Burtch v. Milberg Factors, Inc.*, 662 F.3d 212, 230 (3d Cir. 2011) (quoting Fed. R. Civ. P. 59(e)). Motions filed under Rule 59(e) are triggered when a final judgment has been entered. *Id.* at 230 n.8. A motion brought under Rule 59(e) must rely on one of the following three bases: "(1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error of law or prevent manifest injustice." *Burtch*, 662 F.3d at 230 (quoting *Lazaridis v. Wehmer*, 591 F.3d 666, 669 (3d Cir. 2010)).

The Court has reviewed the Motion and enters its decision without oral argument pursuant to Federal Rule of Civil Procedure 78(b).

IT APPEARING THAT:

1. This Court entered an order on July 15, 2020 granting Plaintiff's Motion for Summary Judgment for the unpaid federal income taxes assessed against Defendant in the amount of \$205,521 (ECF No. 51.)
2. The July 15, 2020 Order included "statutory additions, including interest, accruing after that date to be determined upon a supplemental application that plaintiff shall submit within 28 days of this Order." (*Id.*)
3. On August 12, 2020, Plaintiff requested a 30-day extension to file the supplemental application. (ECF No. 53.)
4. On August 13, 2020, this Court granted Plaintiff's request for extension. (ECF No. 54.)
5. On September 11, 2020, Plaintiff filed their supplemental application in the form of a Motion to Alter Judgment. (ECF No. 55.)
6. On September 14, 2020, Defendant filed a Notice of Appeal that he was Appealing this Court's July 15, 2020 Order. (ECF No. 56.)
7. Plaintiff's Motion presented new evidence regarding the amount of Defendant's debt, which states:
 - a. "As a result of accrued interest and the abatement of penalties for the 2010 tax year that were discharged as a result of bankruptcy, Morales will be indebted to the United States in the amount of \$187,710 as of September 14, 2020, plus interest and statutory additions accruing after that date according to law until paid in full." (ECF No. 55 at 2.)
8. Plaintiff properly moved to alter judgment pursuant to Fed. R. Civ. P 59(e).

9. This Court may properly grant Plaintiff's Motion while Defendant's appeal of the July 15, 2020 order is pending pursuant to Fed. R. App. P. 4(a)(4)(A)(iv).

IT IS on this 22nd day of October 2020

ORDERED that Plaintiff's Motion to Alter Judgment is **GRANTED**; and it is further

ORDERED that judgment is entered against Defendant in the amount of \$187,710 as of September 14, 2020, plus interest and statutory additions accruing after that date according to law until paid in full.

/s/ **Brian R. Martinotti**
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE